

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

DINO N. THEODORE,)	
Plaintiff,)	
)	
v.)	Docket No. 05-10314RGS
)	
DeMOULAS SUPER MARKETS, INC.,)	
Defendant)	
)	

**DEFENDANT'S ANSWER TO THE
PLAINTIFF'S SECOND AMENDED COMPLAINT and JURY CLAIM**

The Defendant, DeMoulas Super Markets, Inc. (the "Defendant") hereby answers the Plaintiff's Second Amended Complaint (the "Complaint") as follows:

FIRST DEFENSE

I. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the "Preliminary Statement" of the Complaint and calls upon the Plaintiff to prove the same.

WHEREFORE, the Defendant demands that the Complaint against it be dismissed and that judgment enter for the Defendant, together with its costs.

1. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 1 of the Complaint and calls upon the Plaintiff to prove the same.
2. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 2 of the Complaint and calls upon the Plaintiff to prove the same.
3. The Defendant admits that it operates grocery stores in Massachusetts and New Hampshire, but otherwise denies the allegations contained in Paragraph 3 of the Complaint.
4. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 4 of the Complaint and calls upon the Plaintiff to prove the same.

5. The Defendant denies the allegations contained in Paragraph 5 of the Complaint.
6. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 6 of the Complaint and calls upon the Plaintiff to prove the same.
7. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 7 of the Complaint and calls upon the Plaintiff to prove the same.
8. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 8 of the Complaint and calls upon the Plaintiff to prove the same.

WHEREFORE, the Defendant demands that the Complaint against it be dismissed and that judgment enter for the Defendant, together with its costs.

COUNT I

9. Paragraph 9 contains a statement of law and contains no allegations against the Defendant; however, to the extent that Paragraph 9 is read to contain allegations against the Defendant, those allegations are denied.
10. Paragraph 10 contains a statement of law and contains no allegations against the Defendant; however, to the extent that Paragraph 10 is read to contain allegations against the Defendant, those allegations are denied.
11. The Defendant denies the allegations contained in Paragraph 11 of the Complaint.
12. The Defendant acknowledges that it operates a grocery store at 1235 Bridge Street in Lowell, but otherwise denies the allegations contained in Paragraph 12 of the Complaint.
13. The Defendant denies the allegations contained in Paragraph 13 of the Complaint.
14. The Defendant denies the allegations contained in Paragraph 14 of the Complaint.
15. The Defendant denies the allegations contained in Paragraph 15 of the Complaint.
16. The Defendant denies the allegations contained in Paragraph 16 of the Complaint.
17. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 17 of the Complaint and calls upon the Plaintiff to prove the same.
18. The Defendant denies the allegations contained in Paragraph 18 of the Complaint.
19. The Defendant denies the allegations contained in Paragraph 19 of the Complaint.

20. The Defendant denies the allegations contained in Paragraph 20 of the Complaint.
21. The Defendant denies the allegations contained in Paragraph 21 of the Complaint.
22. The Defendant denies the allegations contained in Paragraph 22 of the Complaint.
23. The Defendant denies the allegations contained in Paragraph 23 of the Complaint.
24. The Defendant denies the allegations contained in Paragraph 24 of the Complaint.
25. The Defendant denies the allegations contained in Paragraph 25 of the Complaint.
26. The Defendant denies the allegations contained in Paragraph 26 of the Complaint.
27. The Defendant denies the allegations contained in Paragraph 27 of the Complaint.
28. The Defendant denies the allegations contained in Paragraph 28 of the Complaint.
29. The Defendant denies the allegations contained in Paragraph 29 of the Complaint.
30. The Defendant denies the allegations contained in Paragraph 30 of the Complaint.

WHEREFORE, the Defendant demands that the Complaint against it be dismissed and that judgment enter for the Defendant, together with its costs.

COUNT II

31. The Defendant incorporates by reference its answers to the preceding Paragraphs as if expressly set forth herein and makes that its answer to Paragraph 31 of the Complaint.
32. Paragraph 32 contains a statement of law and contains no allegations against the Defendant; however, to the extent that Paragraph 32 is read to contain allegations against the Defendant, those allegations are denied.
33. The Defendant denies the allegations contained in Paragraph 33 of the Complaint.
34. The Defendant denies the allegations contained in Paragraph 34 of the Complaint.
35. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 35 of the Complaint and calls upon the Plaintiff to prove the same.
36. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 36 of the Complaint and calls upon the Plaintiff to prove the same.

37. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 37 of the Complaint and calls upon the Plaintiff to prove the same.

38. The Defendant denies the allegations contained in Paragraph 38 of the Complaint.

39. The Defendant denies the allegations contained in Paragraph 39 of the Complaint.

40. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 40 of the Complaint and calls upon the Plaintiff to prove the same.

41. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 41 of the Complaint and calls upon the Plaintiff to prove the same.

42. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 42 of the Complaint and calls upon the Plaintiff to prove the same.

43. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 43 of the Complaint and calls upon the Plaintiff to prove the same.

44. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 44 of the Complaint and calls upon the Plaintiff to prove the same.

45. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 45 of the Complaint and calls upon the Plaintiff to prove the same.

46. The Defendant denies the allegations contained in Paragraph 46 of the Complaint.

47. The Defendant denies the allegations contained in Paragraph 47 of the Complaint.

48. The Defendant denies the allegations contained in Paragraph 48 of the Complaint.

49. The Defendant denies the allegations contained in Paragraph 49 of the Complaint.

50. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 50 of the Complaint and calls upon the Plaintiff to prove the same.

51. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 51 of the Complaint and calls upon the Plaintiff to prove the same.

WHEREFORE, the Defendant demands that the Complaint against it be dismissed and that judgment enter for the Defendant, together with its costs.

COUNT III

52. The Defendant incorporates by reference its answers to the preceding Paragraphs as if expressly set forth herein and makes that its answer to Paragraph 52 of the Complaint.

53. Paragraph 53 contains a statement of law and contains no allegations against the Defendant; however, to the extent that Paragraph 53 is read to contain allegations against the Defendant, those allegations are denied.

54. Paragraph 54 contains a statement of law and contains no allegations against the Defendant; however, to the extent that Paragraph 54 is read to contain allegations against the Defendant, those allegations are denied.

55. The Defendant denies the allegations contained in Paragraph 55 of the Complaint.

56. The Defendant denies the allegations contained in Paragraph 56 of the Complaint.

57. The Defendant denies the allegations contained in Paragraph 57 of the Complaint.

58. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 58 of the Complaint and calls upon the Plaintiff to prove the same.

WHEREFORE, the Defendant demands that the Complaint against it be dismissed and that judgment enter for the Defendant, together with its costs.

COUNT IV

59. The Defendant incorporates by reference its answers to the preceding Paragraphs as if expressly set forth herein and makes that its answer to Paragraph 59 of the Complaint.

60. The Defendant denies the allegations contained in Paragraph 60 of the Complaint.

61. The Defendant denies the allegations contained in Paragraph 61 of the Complaint.

62. The Defendant denies the allegations contained in Paragraph 62 of the Complaint.

63. The Defendant denies the allegations contained in Paragraph 63 of the Complaint.

64. The Defendant denies the allegations contained in Paragraph 64 of the Complaint.

65. The Defendant denies the allegations contained in Paragraph 65 of the Complaint.

WHEREFORE, the Defendant demands that the Complaint against it be dismissed and that judgment enter for the Defendant, together with its costs.

SECOND DEFENSE

And further answering, the Defendant says that the acts complained of were not committed by a person for whose conduct the Defendant is or was legally responsible.

THIRD DEFENSE

And further answering, the Defendant says that if the Plaintiff proves that the Defendant was negligent as alleged, the Plaintiff was negligent to a greater degree than the Defendant and the Plaintiff is barred from recovery under the Comparative Negligence Law of the Commonwealth of Massachusetts.

FOURTH DEFENSE

And further answering, the Defendant says that if the Plaintiff proves that the Defendant was negligent as alleged, the Plaintiff was also negligent and any recovery or award to the Plaintiff should be reduced in accordance with the Comparative Negligence Law of the Commonwealth of Massachusetts.

FIFTH DEFENSE

And further answering, the Defendant says that to the extent that the Defendant had any obligations to any person, party or entity at the subject premises they have been fully, completely and faithfully performed.

SIXTH DEFENSE

And further answering, the Defendant says that the Complaint should be dismissed pursuant to Rule 12(b)(6) for failure to state a claim upon which relief can be granted.

SEVENTH DEFENSE

And further answering, the Defendant says that the Complaint is barred by Rule 12(b)(4) due to insufficiency of process.

EIGHTH DEFENSE

And further answering, the Defendant says that the Complaint is barred by Rule 12(b)(5) due to insufficiency of service of process.

NINTH DEFENSE

And further answering, the Defendant says that the Plaintiff's Complaint is barred by reason of the applicable statute of limitations.

TENTH DEFENSE

And further answering, the Defendant says that the Plaintiff's complaint should be dismissed pursuant to Rule 12(b)(6) for failure to state a claim upon which relief can be granted insofar as the provisions of the Americans with Disabilities Act referenced in the complaint do not apply to the Defendant.

ELEVENTH DEFENSE

And further answering, the Defendant says that the Plaintiff lacks standing to bring his complaint.

TWELFTH DEFENSE

And further answering, the Defendant says that the Plaintiff has suffered no loss, damage or injury and will suffer no damage or injury as a result of the facts and circumstances set forth in his complaint.

THIRTEENTH DEFENSE

And further answering, the Defendant states that the Plaintiff's Complaint is barred by reason of the doctrine of Laches.

FOURTEENTH DEFENSE

And further answering, the Defendant says that the Plaintiff's request for relief should be denied for reason of unclean hands.

FIFTEENTH DEFENSE

And further answering, the Defendant says that the relief sought by the Plaintiff is not readily achievable.

SIXTEENTH DEFENSE

And further answering, the Defendant says that the relief sought by the Plaintiff would result in a fundamental alteration of the premises and/or facilities at issue.

SEVENTEENTH DEFENSE

And further answering, the Defendant says that the relief sought by the Plaintiff would constitute an undue burden upon the Defendant.

EIGHTEENTH DEFENSE

And further answering, the Defendant says that the Plaintiff's Complaint is barred by reason of the failure to join a necessary and indispensable party.

JURY CLAIM

THE DEFENDANT DEMANDS A TRIAL BY JURY AS TO ALL ISSUES.

**Defendant,
By its attorney,**

/s/Jeffrey C. McLucas

Jeffrey C. McLucas, B.B.O. #550650
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Dated: May 15, 2006

CERTIFICATE OF SERVICE

I, Jeffrey C. McLucas, Esq., counsel for the Defendant, in the above-entitled action, hereby certify that on this day, May 15, 2006, I served upon counsel for: the Plaintiff, **Dino N. Theodore**: Nicholas S. Guerrera, Esq., Shaheen Guerrera & O'Leary, LLC, Jefferson Office Park, 820A Turnpike Street, North Andover, MA 01845; a copy of Defendant's Answer to the Plaintiff's Second Amended Complaint and Jury Claim, by mailing, first class, postage prepaid, to the attorney(s) of record.

Dated: May 15, 2006

Jeffrey C. McLucas, Esq.